Moreover, the plaintiff says that in 1954 a notice to quit was issued (dated the 29th September, 1954) with a view to the plaintiff obtaining an increase in rent. He contends that there was some discussion as to the amount, which was finally settled at $127.50, the small reduction being in consideration of an undertaking by the defendant not to sublet.

Be that as it may, the defendant called evidence to show that the sub-tenants in question had been there prior to the defendant company taking over the tenancy.

Mr. Hardial Singh, the eldest of the Singh brothers and the man who was in charge of the negotiations at the end of 1948 and beginning of 1949, gave his evidence very fairly and did not seriously contend that he made any profound investigation into the question of whether or not there were existing sub-tenants at that time. The omission of any such inquiry, was, in my opinion, natural enough in view of the fact that No. 629 North Bridge Road was part of a package deal, to which I have already referred. Even had Mr. Hardial Singh been apprised of the fact that there were sub-tenants in possession, it would seem that there is little he could have done about it.

The three sub-tenants in question gave evidence as also did Mr. Tan Cheng Kiat, the proprietor of the defendant firm. Their evidence, properly enough, was not seriously disputed on the main issue and I have no hesitation in finding that the three persons in question were in possession as sub-tenants since at any rate 1948, one of them at least having been there even longer than that.

Even if, which I am not prepared to concede, the defendants gave any undertaking as to subletting, such an undertaking would surely not apply to the three existing sub-tenants. Apart from that, I am not satisfied that any such undertaking was given or can reasonably be implied from the documents of the case. The fact that the form of receipts contained a prohibition does not seem to me to be conclusive having regard to the proprietor's lack of knowledge of the English language, and, in particular, to the fact that no subletting took place after the first of such receipts was issued in January 1949. Nor am I satisfied that the reduction of rent from $141 to $127.50, which took place in 1954, had any relation to the question of sub-tenants, in that any undertaking that the defendants might have given on this head could not have affected the existing sub-tenants and would therefore have been of little practical value.

For these reasons I am of opinion that the plaintiff's action fails and must be dismissed with costs.

Claim dismissed.

Solicitors: *Drew & Napier; Rodyk & Davidson.*

PUBLIC PROSECUTOR v. TEOH CHOON TECK

[A. Cr. J. (Hepworth J.) November 23, 1962]

[Penang — Criminal Appeal No. 19 of 1962]

Criminal Law — Forgery — Penal Code, s.465.

Criminal Procedure — Charge of forgery documents in possession of prosecution — Production of — Whether defence entitled to copies thereof — Criminal Procedure Code (Cap. 21), ss.59, 162, 163, 164 and 182(b).

The accused was charged in the Magistrate's Court at Penang with two charges of forgery under section 465 of the Penal Code, in one of which the document he was alleged to have forged was a letter and in other charge he was alleged to have made a false endorsement on a cheque. It was the defence case that both the signature on the letter and the endorsement on the cheque were those of the complainant. Prior to the accused being charged the police had searched his house and taken away a number of documents, among which was the letter referred to in the first charge. After the accused had been charged in court his counsel asked to be allowed to inspect the documents seized by the police and take copies of them. This request was opposed by the prosecution. In the end the Magistrate made an order that since the documents belonged to the accused, he was entitled to photostat copies of them, but was not entitled to the originals. The Deputy Public Prosecutor thereupon filed an appeal against this order of the Magistrate.

Held: (1) in criminal trials before a Sessions or Magistrates' Court, apart from the provisions of sections 59 and 182(*l*) of the Criminal Procedure Code, there is no power for the President or the Magistrate to order the prosecution to produce the documents relevant to the case;

(2) as the documents were specifically referred to in the charges and as it was essential for the accused to have the originals or photostat copies in order for him properly to prepare his defence, which could not otherwise be prepared, the Public Prosecutor in order to ensure that justice was not only done but seen to be done should not have raised objections, on the particular facts of this case, to the defence being supplied with photostat copies of the letter and the cheque and also any other documents removed from his possession which he required for the furtherance of this defence.

Cases referred to:—

(1) *Lim Beh & Ors.* v. *Opium Farmer* (1842), 3 Ky. 10.

(2) *Sathaiah* v. *R.* [1938] M.L.J. 30.

MAGISTRATE'S CRIMINAL APPEAL.

Wan Sulaiman bin Pawan Teh (Deputy Public Prosecutor) for the appellant.

Jag-Jit Singh as *amicus curiae.*

Cur. Adv. Vult.

Hepworth J.: In this case the accused was charged in the Magistrate's Court, Penang, with two charges of forgery under section 465 of the Penal Code, offences within the criminal jurisdiction of such Court, in one of which the document he was alleged to have forged was specified as "a letter dated 13.1.62 written by you to the R.A.F. Accounting Officer, Butterworth" and in the other of which as "cheque No. B. 008024 by making a false endorsement on the back".

Prior to the accused being charged the police had searched his house and taken away a number of documents, among which was the letter referred to in the 1st charge.

After the accused had been charged in Court his counsel asked to be allowed to inspect the documents seized by the police and take copies of them. This request was opposed by the prosecution. In the end the Magistrate made an order that since the documents belonged to

the accused he was entitled to photostat copies of them, but was not entitled to the originals. The Deputy Public Prosecutor thereupon filed an appeal against this order of the Magistrate. (Later "in order to expedite justice and as a matter of courtesy" the prosecution supplied photostat copies of the documents which had been in the possession of the accused to his solicitor, but without prejudice to this appeal).

The Deputy Public Prosecutor was dissatisfied with the order made by the learned Magistrate for the supply of photostat copies alleging that he was wrong in law in making the order for the prosecution to supply the defence with copies of the documents taken by the prosecution from the respondent which documents the prosecution intended to use in evidence at the trial of the respondent. He submitted that the defence should not be supplied with photostat copies or any copies of any of the documents in the prosecutor's hands.

The prosecution case was that the accused had acted as the agent of the complainant in certain transactions in connection with a house belonging to the complainant which was let to some Air Force personnel and acting as such agent he had falsely signed her name to the letter referred to in the 1st charge and her endorsement on the cheque referred to in the 2nd charge. It was the defence case that both the signature on this letter and the endorsement on this cheque were those of the complainant.

The prosecution had had these documents sent to a handwriting expert and in due course a copy of his report under section 427 of the Criminal Procedure Code was served on the accused. The accused wished to call his own handwriting expert with a view to showing that the signatures were those of the complainant and clearly in order to do this it was necessary for his handwriting expert to see either the originals or carbon copies.

What the defence in a criminal trial is entitled to and what it is the duty of the prosecution to provide are to be found in sections 162, 163 and 164 of the Criminal Procedure Code. These sections read as follows:—

"162. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) If the accused has been previously convicted of any offence and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted the Court may add it at any time before sentence is passed.

163. (1) The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 174; provided that the time included between the first and last of such dates shall not exceed one year.

164. When the nature of the case is such that the particulars mentioned in sections 162 and 163 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."

If there be any one principle of criminal law and justice clearer and more obvious than all others, it is that the offence imputed must be positively and precisely stated, so that the accused may certainly know with what he is charged, and be prepared to answer the charge as best he may. (*Lim Beh & Ors.* v. *Opium Farmer*) [1]. A charge should be so drawn that the accused should know exactly and with particularity the case which he has to meet and he should not be left guessing as to which of a number of alternatives he is alleged to have offended against. A charge, and especially a charge in a complicated case, should be accompanied by particulars of the acts complained of as constituting the crime charged when the mere mention of the time, place, persons and crime are insufficient to explain by what means the crime was committed. This is particularly necessary in charges of such offences as cheating. The particulars need not be incorporated in the charge. It is sufficient if they are contained in a separate memorandum supplied to the accused and to the Court. Such a course helps the prosecutor by providing a simple list of the main points which he must prove; it helps the accused by letting him know exactly what he is alleged to have done that was wrong; it helps the Court by giving it a proper outline of the case which enables it to appreciate the significance and the bearing of any piece of evidence as it is given. (*Sathaiah* v. *R.*) [2]. Where the particulars required by section 163 are found insufficient in that case further particulars may be stated as provided by section 164. (*Mallal's* Criminal Procedure, 3rd edition, page 183).

It will be observed that nowhere do sections 162, 163 and 164 say that the accused person is entitled to know the means by which the prosecution proposes to prove the facts alleged in the charge.

Section 59 of the Criminal Procedure Code reads as follows:—

"59. (1) Whenever any Court considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court, it may issue a summons to the person

in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect any of the provisions of the Evidence Ordinance (Cap. 13) or of the Bankers' Books Evidence Ordinance (Cap. 17) or to apply to any book, letter, postcard, telegram or other document in the custody of the postal or telegraph authorities or of any telegraph company."

The need for this section would appear to be that in criminal cases neither party can obtain evidence from the opposite side by means of interlocutories or discovery of documents. The language of this section is very wide but before issuing a summons under it the Court is bound to consider judicially whether the production of the documents is necessary or relevant for the purpose of the inquiry, trial or other proceeding. The thing called for must have some relation to, or connection with, the subject-matter of the investigation or inquiry or throw some light on the proceeding, or supply some link in the chain of evidence. Anything which may reasonably be regarded as forming part of the evidence in the case may be ordered to be produced, and that is the primary object of these provisions. (*Mallal's* Criminal Procedure, 3rd edition, page 69). It is not a question at that stage of whether the document is admissible or not. It may be that the thing called for may turn out to be wholly irrelevant to the inquiry; but so long as it is considered to be necessary or desirable for the purpose of the inquiry, the power is there. (*Sohoni's* Code of Criminal Procedure, 15th edition, Volume I, page 239). The important thing is that at the time it appears to be relevant to the investigation, inquiry, trial or other proceeding.

These provisions are as applicable to documents in the possession of the prosecution as they are to those in the possession of any party to the proceedings.

The necessity for calling on parties to produce documents arises in criminal as in civil cases, because where documents are in the possession of the adverse party, before secondary evidence of their contents can be given the party offering it must prove that sufficient and timely notice to produce the documents has been given to the other party or his solicitor in those cases in which notice is necessary. The reason why notice to produce is required is not therefore to give the opposite party notice that the document will be used so that he may be enabled to prepare evidence to explain or confirm it, but merely to exclude the argument that the party desirous of proving the document has not taken all reasonable means to procure the original. (*Sohoni's* Code of Criminal Procedure, 15th edition, Volume I, page 241).

The document or thing must be clearly specified, that is, it must indicate the document to be produced and should be given at such time as to afford the party a reasonable opportunity for producing the document at the trial. A general direction to produce all papers relating to the subject in dispute will not be enforced. It must be directed at a specific document.

The jurisdiction of the Court to order the production of a document or thing carries with it the jurisdiction to allow the right of inspection. It does not, however, give the Court jurisdiction to order the prosecution to supply an accused person with photostat copies of those documents.

But in the present case it was not the complaint of the accused that the provisions of sections 162, 163 and 164 had not been complied with. Nor did the accused wish to be in a position himself to give secondary evidence of the contents of the letter and the cheque. He knew that in order to prove their case the prosecution must put the letter and the cheque in evidence. In the present circumstances I do not think the provisions of sections 59, 162, 163 and 164 of the Criminal Procedure Code were of assistance to the accused in the solving of his problem. The accused's problem was that in order to be in a position to put forward the defence that these two signatures were in fact the signatures of the complainant it was essential for him to have available before the trial either the original cheque and letter or photostat copies of them to obtain the advice of his handwriting expert. He clearly needed to have that advice prior to the date of trial. If he was not given the opportunity prior to the date of trial then an application for an adjournment during the trial when the documents were put in evidence would be inevitable, an application which would have to be granted. The prosecution were not going to let this original letter and this original cheque out of their possession and from a purely practical point of view, assuming such handwriting expert was not in Penang, the only manner in which the accused could obtain his advice was either to bring the handwriting expert to Penang which would no doubt be very expensive or to obtain photostat copies of the document and send them to him. As these documents were specifically referred to in the charges and as it was essential for the accused to have the originals or photostat copies in order for him properly to prepare his defence, which could not otherwise be prepared, it seems to me that the Public Prosecutor in order to ensure that justice was not only done but seen to be done should not have raised objections, on the particular facts of this case, to the defence being supplied with photostat copies of the letter and the cheque and also any other documents removed from his possession which he required for the furtherance of this defence, for example a letter or letters in the handwriting of the complainant.

I do not think that any of the statutory provisions to which I have referred entitle an accused person to know by what means the prosecution proposes to prove the facts which they allege make up the offence under the particular section with which the accused is charged, assuming due compliance with sections 162, 163 and 164. Section 59 is merely a vehicle whereby secondary evidence may, if it comes to the point, be given of the contents of a document.

Although the letter and the cheque were part of the means by which the prosecution proposed to prove the facts which they alleged made up the offences of forgery it was not for that reason that I think the accused should have been supplied with photostat copies. It is because, as I have already said, without them the accused was not in a position to prepare his defence and in such circumstances justice was not being done.

In my opinion, therefore, in criminal trials before a Sessions or Magistrate's Court, apart from the provisions of sections 59 and 182(1), there is no power for the President or the Magistrate to order the prosecution to produce the documents relevant to that case, and I have not found, nor have I been referred to, any provision which gives power to order the supply of copies.

In the event the accused was acquitted without being called upon for his defence so that there will be no order on this appeal.

No order.

DIN v. PUBLIC PROSECUTOR

[A. Cr. J. (Suffian J.) December 4, 1962]

[Alor Star — Criminal Appeal No. 77 of 1962]

Road Traffic — Plying vehicle for hire or reward — "Hire or reward" — Meaning of — Road Traffic Ordinance, 1958, ss.92(1) and 144(a) — Presumption under s.144(a) — Rebuttal of.

Whether a vehicle is being used for conveying passengers for hire or reward in breach of section 92(1) of the Road Traffic Ordinance is a question of fact and must be determined upon all the circumstances of the case, including the length of time over which this course of conduct has gone on, the nature of the payments made and the exact amount of payment. The test is whether the accused intended to accept from the passengers a payment which he expected to be tendered and which they intended to tender when he had given them their ride.

Cases referred to:—

(1) *Wyatt* v. *Guildhall Insurance Co. Ltd.* [1937] 1 K.B. 653.

(2) *McCarthy* v. *British Oak Insurance Co., Ltd.* [1938] 3 All E.R. 1.

(3) *Bonham* v. *Zurich General Accident & Liability Insurance Co., Ltd.* [1945] K.B. 292.

MAGISTRATE'S CRIMINAL APPEAL.

G. N. Christie for the appellant.

Hamzah bin Dato Abu Samah (Deputy Public Prosecutor) for the respondent.

Suffian J.: The principal question for decision here is whether or not the accused on the 29th October, 1961 conveyed in car No. AB. 2851, the two passengers, Ismail and Omar, for hire or reward, an offence punishable under section 92(1) of the Road Traffic Ordinance, 1958.

The prosecution depended on three things —

(a) when kept under police observation from 7th October, 1961 to 16th October, 1961 the car was seen being driven by the defendant in and out of town carrying passengers of various nationalities, 12 times altogether;

(b) on 29th October, 1961, the date specified in the charge, it was again driven by the accused but this time with the two Malays on board; and

(c) section 144(a) of the Road Traffic Ordinance which says that it shall be presumed until the contrary is proved that the conveyance of Ismail and Omar was for hire or reward.

The learned Magistrate called on the accused for his defence. The accused gave evidence on oath denying the charge. He said that the car belonged to Salleh (not a witness) and he drove it at Ismail's request. He called the other passenger, Omar, in support who said that he was invited by Ismail to accompany him to Kubor Panjang. At the end of the case, the learned Magistrate convicted the accused who appealed.

Ismail, the other passenger, had been called by the prosecution. He said that the car belonged to Salleh, not the accused. On the day in question he borrowed it from Salleh and asked the accused to drive it. He bought lunch for the accused and put in $4 worth of petrol into the car. They then drove off. It is urged for the appellant that Ismail having been called by the prosecution as a witness worthy of credit and not having been impeached by them, at the end of the prosecution case the learned Magistrate should not even have called on the accused to enter into his defence as the statutory presumption had already been rebutted by Ismail's own evidence.

The only evidence of the hiring or reward here is the lunch bought by Ismail for the accused and the $4 worth of petrol put into the car by Ismail.

I allowed the appeal on 25th November, 1962 and when writing my grounds I came across three English decisions: *Wyatt* v. *Guildhall Insurance Co. Ltd.* (1); *McCarthy* v. *British Oak Insurance Co., Ltd.* (2); *Bonham* v. *Zurich General Accident & Liability Insurance Co., Ltd.* (3). Though they were decisions on the expression "hire or reward" in insurance policies, nevertheless I think that the principle decided therein affords valuable guidance in this appeal. In the second case Atkinson J. stated the principle as regards hiring thus —

"I think that what is intended to be excluded by this policy is something which is a genuine business contract for hiring, something which is a real hiring, a doing